IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9497 OF 2004

Kisan Ramji Thete ... Petitioner

versus

The Deputy Registrar and

others ... Respondents

...

Mr. K.S. Patil with Mr. P.N. Joshi, for the Petitioner.

Mr. C.R. Sonawane, A.G.P., for Respondents Nos. 1 and 4.

Mrs. Tendulkar, for Respondent No. 2.

...

CORAM : A.M.KHANWILKAR,J.

3rd September 2004

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Karnik waives notice for Respondent No. 2 Bank. Mr. Sonawane, A.G.P., waives notice for Respondents Nos. 1 and 4. Respondent No. 3 is a formal party. For the nature of order that

needs to be passed in this writ petition, notice to Respondent No. 3 is dispensed with. As short question is involved, the petition is taken up for final disposal forthwith by consent.

. Briefly stated, the recovery certificate has been issued in favour of the Respondent No.2 Bank and against the son of the Petitioner. The Petitioner, however, filed revision application before the revisional authority and has also complied with the statutory requirement of pre-deposit of 50 per cent. of the recoverable dues. The Petitioner approached the revisional authority on the assertion that the property owned and possessed by the Petitioner has been made subject matter of proceedings under section 101 of the Act initiated against his son and his son has no interest in the said property. However, the revisional authority has dismissed the revision application preferred by the Petitioner on the sole reasoning that the Petitioner has no locus to institute revision application questioning the recovery certificate issued against his son. This reason clearly overlooks the nature of the grievance made on behalf of the Petitioner. The case of the

Petitioner is only with regard to specific property, which he asserts is owned and possessed by him and that his son had no connection or right title or interest therein. It is also the case of the Petitioner that he is neither the guarantor nor mortgaged the said property for availing of the loan in favour of his son by executing any document. That aspect will have to be considered on its own merits depending upon whether the Petitioner substantiates his claim that the property bearing Shop No. 17, situated at Landmark Apartment, Model Colony, Nasik, is owned and possessed by him. In other words, the reason recorded by the revisional authority in non-suiting the Petitioner cannot be sustained. The same will, therefore, have to be set aside and the parties will have to be relegated before the revisional authority for considering the revision application on its own merits in accordance with law. It needs to be clarified that the Petitioner is not questioning the recovery certificate issued against his son as such, but is only interested in ensuring that the above mentioned property, which is owned and possessed by him, is not taken over by the Respondent Bank for recovery of the amounts,

which are due and payable by his son and which he is legitimately entitled to resist. The revision application shall be decided by the revision authority, Respondent No. 4, as expeditiously as possible, preferably within four weeks from the receipt of writ of this Court on its own merits in accordance with law uninfluenced by any of the observations made in the impugned order or, for that matter, this order. Petition disposed of on the above terms. No order as to costs.

. The Petitioner and Respondent No. 2 Bank shall appear in the office of the Revisional Authority on 20th September 2004 at 11 a.m. and the revisional authority, in turn, may proceed to decide the revision application on the same date, after giving opportunity to all the parties, or, on such other date as it may find convenient, but, at the same time, shall ensure that the revision application is finally disposed of within four weeks from today. It is made clear that no notice will be issued to the parties for the hearing before the revisional authority scheduled on 20th September 2004. The Petitioner undertakes to inform the Respondent No. 3 about the date, time and place of hearing of the

revision application preferred by him. That assurance is accepted.

(A.M.KHANWILKAR,J.)